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FOLEY & LARDNER
402 W. BROADWAY 23RD FLOOR
SAN DIEGO CALIFORNIA 92101

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OFFICE OF PETITIONS

ON PETITION

In re Application of: .
PELLETIER et al.
Filed: September 28, 1999
Application No. 09/407,804
Dckt No.: 073406-0402

This application is before this office due to a petition filed July 8, 2002 styled as a petition under 37 CFR 1.181 or 1.182 to the Commissioner seeking review of an action of the Group Director, TC 1600.

The petition under 37 CFR 1.181 is **dismissed as premature**.

The petition considered under 37 CFR 1.182 is dismissed as immaterial.

Petitioner complains that the Office policy set forth in 1192 O.G. 68 (Nov. 19, 1996) which permits up to 10 independent nucleotide sequences to be claimed in one application, is not being followed in this instance.

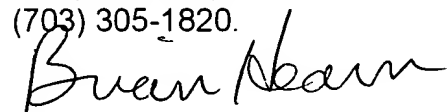
A party to a proceeding in the Patent and Trademark Office has a right to petition, and may expect to receive a decision by either the Office official delegated authority to render the decision, or the delegating official. See In re Arnott, 19 USPQ2d 1049, 1052 (Comm'r Pat. 1991). While a higher level official, at the request of the party, may *further* review a decision on petitionable matters rendered pursuant to delegated authority, such review is a matter which lies within the sound discretion of that higher level official, and is not a matter of right. Id. The rules of practice provide for an orderly treatment of procedural issues, and thus conserve limited USPTO resources.

In this instance, the examiner, not the Group Director, has repeated and made final the election/restriction requirement in the Office action of April 8, 2002, and in so doing also considered the application of 1192 O.G. 68 to the facts of this case. See Office action of April 8, 2002, at 2-3. 37 CFR 1.144 sets forth that such final requirement for restriction is subject to review on petition to the Commissioner. The Commissioner has already delegated that first level review of an examiner's final requirement for restriction to the Group Director. See MPEP 1002.02(c), ¶ 3. In due course and if necessary a petitioner may then seek higher level of review of the Group Director's

decision under 37 CFR 1.181(a)(3). See MPEP 1002.02(b) ¶ 15. Thus the requested review under 37 CFR 1.181 of any examiner's final requirement for restriction is properly performed, in the first instance, by that examiner's Group Director. It also follows that as the rules of practice already provide for the requested review, 37 CFR 1.182, by its terms, does not apply.

This application is being returned to Technology Center 1600 for treatment of the petition filed July 8, 2002, by the Group Director under 37 CFR §§ 1.144 and 1.181.

Telephone inquiries related to this decision should be directed to the undersigned at (703) 305-1820.

A handwritten signature in black ink, appearing to read "Brian Hearn", is written over the printed name.

Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner for
Patent Examination Policy